



California Fair Political Practices Commission

March 20, 1989

Kathleen Purcell
Remcho, Johansen & Purcell
220 Montgomery Street, Suite 800
San Francisco, California 94104

Re: Your Request For Advice
Our File No. A-89-049

Dear Ms. Purcell:

You have requested advice on behalf of the Assembly Democrats Campaign Committee concerning the campaign disclosure provisions of the Political Reform Act.^{1/}

This letter confirms our telephone conversation. However, please note that some of the advice provided to you by telephone has changed because of a recent court ruling.

In addition, this letter addresses the issue of whether a legislative caucus committee can continue to exist under the provisions of Proposition 73.

The questions posed in your letter arose in connection with committee representatives engaging in the "segregation" process pursuant to Commission Regulations 18536, 18536.1 and 18536.2. Those regulations were adopted by the Commission to implement the contribution limitation provisions enacted by Proposition 73 (passed by the voters at the June 1988 state primary election). Proposition 73 provides:

Any person who possesses campaign funds on the effective date of this chapter may expend these funds for any lawful purpose other than to support or oppose a candidacy for elective office.

(Section 85306.)

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Kathleen Purcell
Page Two

The Commission adopted regulations which provide that funds held on January 1, 1989, may be used to support or oppose a candidacy after January 1, 1989, if those funds consist of contributions which were within the contribution limitations of Proposition 73 at the time they were received, or if the funds are "brought into compliance" with the contribution limitations (referred to as the "segregation process").

On February 8, 1989, the Los Angeles County Superior Court ruled that the provisions in the regulations for using funds received prior to January 1, 1989, for the purpose of supporting or opposing a candidacy after January 1, 1989, are invalid. (California Common Cause v. California Fair Political Practices Commission, Los Angeles Sup. Ct. No. C709383.) The regulations which were declared invalid are Section 18536(b)(2) and 18536.1. The result of the court ruling is that, at present, no funds held by a candidate or committee may be used, commencing January 1, 1989, to support or oppose a candidacy.^{2/}

Therefore, we will not address the second question presented in your letter because that question pertains solely to the procedures for segregating funds held on January 1, 1989, pursuant to Commission regulations.

This letter does address the first and third questions presented in your letter.

FACTS

Since its inception, the Assembly Democrats Campaign Committee has functioned as a legislative caucus committee. The committee's budget and expenditures have been approved by the Assembly Democratic Caucus. However, at the time the Assembly Democrats Campaign Committee was formed, it did not identify

^{2/} The Commission has decided to appeal the court's order. However, in the meantime, in accordance with the court order, the Commission may determine whether any campaign funds received between June 8 and December 31, 1988, may be used to support or oppose a candidacy for elective office in 1989 or thereafter. The Commission will consider adoption of emergency amendments to Regulations 18536 and 18536.1. Thus, the Commission could act in the near future to amend Regulations 18536 and 18536.1 in a manner that changes the advice in this letter. Please contact the Commission's Legal Division to obtain a copy of the staff's memorandum to the Commission concerning amendments to these regulations.

Kathleen Purcell
Page Three

itself on its statement of organization (Form 410) as a legislative caucus committee. The authorized signator for committee expenditures and committee campaign statements is Speaker Willie Brown.

QUESTIONS

- (1) Does the Assembly Democrats Campaign Committee constitute a legislative caucus committee?
- (2) If the conclusion is that the Assembly Democrats Campaign Committee is a legislative caucus committee, are there any steps that the committee should take either retrospectively or prospectively to change its reporting?
- (3) Can a legislative caucus committee, as previously established, continue to function under the provisions of Proposition 73?

CONCLUSIONS

- (1) The Assembly Democrats Campaign Committee appears to be the official committee of the Assembly Democratic Caucus.
- (2) The Assembly Democrats Campaign Committee should amend its Statement of Organization (Form 410) to indicate it is a committee controlled by the Assembly Democratic Caucus. A note should be made on the amendment to indicate that the committee has been controlled by the caucus since its inception. (A Form 405 - Amendment to Campaign Disclosure Statement - may be attached to the Form 410 to provide this information.) The caucus chairperson must sign all campaign disclosure statements filed by the committee in the future.
- (3) Because legislative caucus committees are "controlled" by officeholders, the committees, as previously established, cannot continue to function under the provisions of Proposition 73.

ANALYSIS

- (1) Commission regulations impose certain requirements concerning identification of the committee on its statement of organization, and concerning the verification of campaign disclosure statements on "legislative caucus committees." The regulations do not define legislative caucus committees.

Kathleen Purcell
Page Four

You have indicated that the Assembly Democrats Campaign Committee has functioned as a caucus committee, that its budget and expenditures have been approved by the caucus, and that committee funds have not been used to support Mr. Brown or his campaign. There is no other committee used by the Assembly Democratic Caucus. Based on these facts, we conclude that the Assembly Democrats Campaign Committee is the official committee of the Assembly Democratic Caucus.

(2) Section 84101 provides that every recipient committee pursuant to Section 82013(a) must file a statement of organization. Section 84102 requires that the statement of organization include:

A statement whether the committee is independent or controlled, and if it is controlled, the name of each candidate or committee by which it is controlled or with which it acts jointly.

(Section 84102(e).)

Regulation 18430 sets out the procedures to be followed by committees controlled by more than one candidate and provides that in the case of a legislative caucus committee:

- (1) The statement of organization must list the legislative caucus as controlling the committee;
- (2) Each campaign statement of the committee must indicate that it is controlled by the caucus, and must be signed and verified by the caucus chairman on behalf of the caucus.

(Regulation 18430(c),
copy enclosed.)

Because it appears to be general knowledge that the Assembly Democrats Campaign Committee is an official committee of the Assembly Democratic Caucus, it is not necessary that all of the committee's campaign disclosure statements be amended to include the signature and verification of the caucus chairperson. An amendment to the statement of organization is sufficient for this purpose.

Because Proposition 73 and Commission regulations provide that a candidate may have only one committee for each specific office for which the candidate has filed a statement of intention (Form 501), legislative caucus committees, as they have been organized and have functioned in the past, may no longer exist.

Kathleen Purcell
Page Five

Therefore, if the Assembly Democrats Campaign Committee continues to exist, it cannot be "controlled" by a candidate.

Section 82016 provides:

"Controlled committee" means a committee which is controlled directly or indirectly by a candidate or state measure proponent or which acts jointly with a candidate, controlled committee or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he, his agent or any other committee he controls has significant influence on the actions or decisions of the committee.

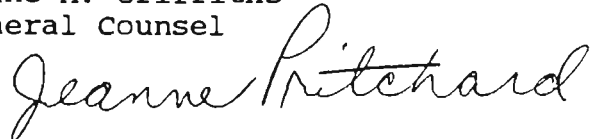
The Commission has interpreted the definition of "controlled committee" very broadly to include any significant participation in the actions of a committee by a candidate, his or her agent, or representatives of any other committee he or she controls. Enclosed for your guidance are the following advice letters issued by the Commission on the subject of what constitutes "control" of a committee:

Pastrick Advice Letter, No. A-87-063
Ferguson Advice Letter, No. A-86-044
Madden Advice Letter, No. A-85-197
Memo To Advice File, No. T-85-139
Memo To Advice File, No. M-84-257
Gross Advice Letter, No. A-84-143

If you have any questions about this letter, please call me at (916) 322-5662.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeanne Pritchard
Division Chief
Technical Assistance and
Analysis Division

REMCHO, JOHANSEN & PURCELL
ATTORNEYS AT LAW

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F P P C

Jan 25 8 31 AM '89

January 25, 1989

Jeanne Pritchard
Fair Political Practices
Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95814-0807

Re: Assembly Democrats Campaign Committee

Dear Ms. Pritchard:

I write to follow up on your conversation with Eleanor Johns and request an advice letter regarding the Assembly Democrats Campaign Committee.

As Ms. Johns informed you by telephone, when the Assembly Democrats Campaign Committee was formed, it did not identify itself as a caucus account, and the authorized signator for committee expenditures is Willie L. Brown, acting alone. However, as Ms. Johns further informed you, the Committee has, in fact, functioned as a caucus committee. Its budget and expenditures have been approved by the caucus, and funds from the Committee account have not been used for Mr. Brown or his Assembly campaign. As far as we have been able to determine, there is no other account or committee that constitutes an Assembly Democrats caucus committee.

Our questions are as follows:

1. Does the Assembly Democrats Campaign Committee constitute a caucus committee under 2 Cal. Admin. Code section 18430?

2. In conducting the segregation process provided for under 2 Cal. Admin. Code sections 18536 and 18536.1 for funds in Willie L. Brown campaign accounts, should contributions to the Assembly Democrats Campaign Committee and the bank account of that Committee be included?

Jeanne Pritchard, FPPC
January 25, 1989
Page Two

3. In the event you conclude that the Assembly Democrats Campaign Committee is a caucus committee, are there any steps that the Committee should take either retrospectively and/or prospectively to change its reporting?

We would appreciate a response at your earliest convenience. If possible, we would like to have this matter cleared up before filing reports on January 31, 1989.

Thank you for your consideration.

Sincerely,


Kathleen J. Purcell

KJP:kb

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FPPC

Jan 26 8 31 AM '89

January 25, 1989

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Thank you for your consideration.

Sincerely,


Kathleen J. Purcell

KJP:kb



California Fair Political Practices Commission

January 26, 1989

Kathleen Purcell
Remcho, Johansen & Purcell
220 Montgomery Street, Suite 800
San Francisco, CA 94104

Re: Letter No. 89-049

Dear Ms. Purcell:

Your letter requesting advice under the Political Reform Act was received on January 25, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, reading "Jeanne Pritchard by jph".

Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

JP:plh